

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STELLA UNDERWOOD,

Claimant,

v.

ARCTIC CATERING, INC.,

Employer,

and

SEABRIGHT INSURANCE CO.,

Surety,

Defendants.

IC 2012-027457

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

March 23, 2015

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing in Boise on February 11, 2015. Claimant, Stella Underwood, was represented by Richard S. Owen of Nampa. Defendants were represented by Eric S. Bailey of Boise. The parties presented documentary evidence and brief legal argument. No post-hearing depositions were taken. Following the filing of legal briefs, the matter was taken under advisement on March 12, 2015.

ISSUES

By the time of the hearing, Defendants agreed that Claimant is entitled to the benefits she sought by her Complaint and Motion for Emergency Hearing. They also agreed that Claimant is entitled to attorney fees related to Defendants' actions in cutting off her temporary disability benefits in October 2014, and their failure to pay medical expenses of \$2,490.71. The only remaining dispute is the amount of attorney fees to which Claimant is entitled.

CONTENTIONS OF THE PARTIES

Claimant contends that she is entitled attorney fees equal to 30% of \$9,389.06, the amount her attorney recovered for her as a result of the hearing, for a total of \$2,816.72. Defendants agree that at least \$1,650.00 is reasonable. However, they counter that no more than \$1,950.00 is appropriate in light of the very limited activity required of Claimant's counsel to obtain resolution of Claimant's claims, and the lack of complexity involved.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's Exhibits ("CE") A through D.
2. Defendants' Exhibits ("DE") 1 through 2; and
3. The Affidavit of Richard S. Owen in Support of Attorney's Fees filed post-hearing, on February 26, 2015.

FINDINGS OF FACT

BACKGROUND

1. No underlying issues related to Claimant's eligibility for benefits need to be determined as a result of the hearing because Defendants conceded these points shortly prior to the hearing date.

2. Defendants have provided no reason why Claimant's benefits on her accepted claim were cut off at the end of October 2014. As a result of Defendants' actions, Claimant's medical bills went unpaid and her income benefits ceased for more than three months.

3. It is undisputed that Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804 as a result of Defendants' unreasonable cessation of her temporary disability benefits

from October 29, 2014 through February 11, 2015 – for a total arrearage of \$6,898.35 – and their unreasonable failure to pay medical expenses of \$2,490.71.

DISCUSSION AND FURTHER FINDINGS

The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

ATTORNEY FEES

Idaho Code § 72-804 provides that if the Commission determines that the employer contests a claim for compensation made by an injured employee without reasonable ground or the employer neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee the compensation provided by law or without reasonable ground discontinued compensation as provided by law, the employer shall pay reasonable attorney fees in addition to the compensation provided by law. In *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984), the Court listed the factors the Commission is to consider in awarding attorney fees under Idaho Code § 72-804. The factors include but are not limited to:

- (1) the anticipated time and labor required to perform the legal services properly;
- (2) the novelty and difficulty of the legal issues involved in the matter;
- (3) the fees customarily charged for similar legal services;
- (4) the possible total recovery if successful;
- (5) the time limitations imposed by the client or circumstances of the case;
- (6) the nature and length of the attorney-client relationship;
- (7) the experience, skill and reputation of the attorney;
- (8) the ability of the client to pay for the legal services to be rendered; and
- (9) the risk of no recovery.

4. Attorney fees in workers' compensation cases, generally, are governed by IDAPA 17.02.08.033 (01)e(ii), which provides, in part, that a 30% contingency fee based on available funds is presumed reasonable in cases that proceed to a hearing.

5. There is no dispute that Claimant is entitled to an award of attorney fees. Therefore, Claimant has established that she is entitled to such an award.

6. The remaining question posed by the parties is whether and to what extent the guidelines provided by IDAPA 17.02.08.033 (01)e(ii) and/or *Hogaboom* govern the amount to which Claimant is entitled. This determination traditionally lies within the province of the full Commission. Therefore, the Referee recommends that the full Commission take up the case for further fact-finding and a determination of the amount of attorney fees to be awarded to Claimant, based upon the evidence and briefing already in the record.

CONCLUSIONS OF LAW

1. Claimant has established she is entitled to an award of attorney fees related to Defendants' unreasonable cessation of her temporary disability benefits from October 29, 2014 through February 9, 2015 and unreasonable failure to timely pay medical expenses in the amount of \$2,490.71.

2. The case is referred to the full Commission for further findings of fact and a determination regarding the amount of attorney fees to which Claimant is entitled.

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RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 23rd day of March 2015.

INDUSTRIAL COMMISSION

/s/
LaDawn Marsters, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2015, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

RICHARD S OWEN
OWEN & FARNEY
P O BOX 278
NAMPA ID 83653

ERIC S BAILEY
BOWEN & BAILEY
PO BOX 1007
BOISE ID 83701-1007

sjw

/s/

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ORDER

Filed March 23, 2015

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has established she is entitled to an award of attorney fees related to Defendants' unreasonable cessation of her temporary disability benefits from October 29, 2014 through February 9, 2015 and unreasonable failure to timely pay medical expenses in the amount of \$2,490.71.

2. The full Commission will issue a separate memorandum order regarding the amount of attorney fees to which Claimant is entitled.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 23rd day of March, 2015.

INDUSTRIAL COMMISSION

/s/
R.D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

/s/
Thomas P. Baskin Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2015, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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